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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Placer)

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In re the Marriage of RAMASWAMY and  
JAMUNA ADISESH.

C049458

RAMASWAMY ADISESH,  
  
Appellant,

(Super. Ct. No.  
SDR2509)

v.

JAMUNA NANJAPPA,  
  
Respondent;

PRASAD BETADPUR,  
  
Claimant and Respondent.

The trial court denied Ramaswamy Adishes's attempt to join his former brother-in-law, Prasad Betadpur, as a party to this family law proceeding via a pleading styled "Complaint for Joinder." The complaint alleges (among other things) that his former wife, Jamuna Nanjappa, and her brother conspired to defraud him in connection with a written postjudgment agreement. The court apparently agreed the complaint constituted a belated

effort to set aside a 2001 judgment allocating community assets and dismissed it. (Fam. Code, §§ 2021, 2121, 2122; Cal. Rules of Court, rule 5.158.)

Adisesh appeals in pro se from the court's judgment dismissing his complaint.

We conclude the complaint's causes of action for breach of a written postjudgment agreement and for fraud arising from that postjudgment agreement do not constitute an attack on the 2001 judgment and thus are not time-barred. We shall reverse the judgment of dismissal and direct the trial court to allow Adisesh to refile as a regular civil action his causes of action arising from the parties' postjudgment agreement.

#### **BACKGROUND**

We take the background facts chiefly from the allegations contained in Adisesh's complaint for joinder.

Adisesh and Nanjappa married in 1982. A judgment dissolving their marriage and dividing their property was entered in 1994.

In 1996 the court set aside that portion of the 1994 judgment dealing with property issues, and in January 2001 the court entered a new judgment pursuant to a marital settlement agreement (2001 judgment). Among other things, the 2001 judgment awarded Adisesh the former family home in Placer County and required him to make an equalizing payment of \$10,000 to Nanjappa. In connection with the 2001 judgment, Nanjappa purported to transfer her entire interest in the family home to Adisesh.

When he entered into the agreement on which the 2001 judgment is based, Adishes did not know that, in the interim between judgments governing the parties' property -- i.e., after the court set aside the 1994 judgment but before entry of the 2001 judgment -- Nanjappa had filed a petition in the bankruptcy court. Adishes was not listed as a creditor or codebtor in Nanjappa's bankruptcy filings.

Soon after the 2001 judgment was entered, the parties signed an agreement titled "Amendments to the Stipulated Marital Settlement Agreement on Reserved Issues" (postjudgment agreement), in which they agreed to certain "amendments and modifications" to the 2001 judgment. This postjudgment agreement provided (among other things) for a much larger equalization payment by Adishes to Nanjappa of \$70,000 in exchange for an award to Adishes of an IRA account and Nanjappa's agreement to relinquish all claims to this account.

Although the postjudgment agreement contemplates that it "shall be submitted to the Court for approval and merged into the Judgment of Dissolution," it never was. Adishes complied with its terms and, at Nanjappa's request, transferred the \$70,000 equalization payment to Betadpur so he could purchase a house for Nanjappa. But after Adishes transferred the money to Betadpur, he discovered Nanjappa had closed the IRA account he should have received in exchange, and he got nothing.

In May 2001 the bankruptcy trustee initiated adversary proceedings against Adishes to force the sale of the family home ostensibly awarded to him in the 2001 judgment for the benefit

of Nanjappa's creditors in bankruptcy on the ground that when Nanjappa filed for bankruptcy, she still held a community property interest in the home. In or about May 2002 Adishes was required to pay \$45,000 into Nanjappa's bankruptcy estate to keep the family home.

In November 2003 Adishes brought a notice of motion and declaration for joinder, seeking to join Betadpur in the instant action. Adishes asserts Betadpur is an indispensable party because he holds title to a residence in Palo Alto for Nanjappa's benefit (to shield it from her creditors), which was purchased with the \$70,000 equalizing payment Adishes made under the terms of the postjudgment agreement and the proceeds of the IRA account Adishes should have received in exchange.

With his motion, Adishes served his complaint for joinder, which alleged causes of action for fraud and breach of the parties' postjudgment agreement, against Nanjappa and Betadpur. The complaint sought an order joining Betadpur as a party to this action, a judicial declaration that Betadpur holds the Palo Alto residence in trust for Adishes and Nanjappa and an order compelling him to convey it to them, and damages from both Nanjappa and Betadpur. Adishes alleged Nanjappa and Betadpur conspired to induce him to transfer \$70,000 under the postjudgment agreement; to violate Nanjappa's fiduciary duties to Adishes; and to conceal the fact of Nanjappa's bankruptcy petition from Adishes, so as to induce him to enter into the postjudgment agreement by which he transferred \$70,000 to Betadpur for Nanjappa's benefit. The damages Adishes seeks

include \$30,000 from the IRA account he was to have received in exchange for his \$70,000, and the \$45,000 he paid to the bankruptcy trustee.

In January 2004 Adishes filed his complaint for joinder.

The record before us indicates the trial court issued an order directing Nanjappa to appear and show cause why the relief Adishes sought should not be granted and, although it is somewhat unclear, suggests defaults were entered against Nanjappa and Betadpur, and a lis pendens was recorded against the Palo Alto residence.<sup>1</sup>

In January 2005 Betadpur appeared in this matter, moved to set aside the default, and sought leave to file a responsive pleading. He also sought to dismiss the complaint for joinder and to expunge the lis pendens on the Palo Alto residence. Betadpur argued that Adishes cannot enforce any of Nanjappa's promises in the postjudgment agreement because (1) the parties were powerless to make any agreement disposing of their property without first setting aside the 2001 judgment, and (2) the statutory time frames for setting aside the 2001 judgment have passed. (Code Civ. Proc., § 473; Fam. Code, § 2120 et seq.)

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<sup>1</sup> The precise procedural posture at the time of the court's dismissal of the complaint is unclear. Adishes tells us on appeal that the order to show cause was dismissed and the complaint was allowed to proceed because "the presiding judge felt that the Order to Show Cause for Breach of fiduciary duty was superfluous," while Nanjappa and Betadpur tell us to the contrary that the court "issued an Order Staying The Complaint For Joinder, pending the resolution of the Order To Show Cause." Neither party provides citations to the record.

Moreover, Betadpur argued, because the Palo Alto residence was purchased after the 2001 judgment, it cannot be construed as property of the community necessitating his joinder.

In Adisesh's response, he emphatically denied any attempt to set aside the 2001 judgment, characterizing his complaint as an effort "to enforce the existing judgment and the marital settlement agreement(s)" by requiring Nanjappa to abide by her agreements to convey clear title to the family home and to transfer the IRA account as promised. As to these claims, Adisesh asserted, no statute of limitations has run.

The trial court apparently agreed with Betadpur: the minutes of the unreported hearing on Betadpur's motion to set aside the default and dismiss the complaint for joinder state: "Ct dismisses complaint re joinder, default set aside[,] lis pendens expunged[.] . . . Statute of limitation re set aside -- has run out --[.]"

#### **DISCUSSION**

On appeal, Adisesh insists the court misunderstood the thrust of his complaint and thereby applied the wrong statute of limitations. He repeats here that his complaint seeks "to enforce the existing marital settlement agreements and hold [Nanjappa] accountable for the mar[it]al settlement agreement that the [sic] she had executed."

With one minor exception, Adisesh is correct.

Resolution of a statute of limitations issue is normally a question of fact. (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112; *Institoris v. City of Los Angeles* (1989)

210 Cal.App.3d 10, 17 (*Institoris*).) "The trial court's finding on the accrual of a cause of action for statute of limitations is upheld on appeal if supported by substantial evidence." (*Institoris*, at p. 17; see *Enfield v. Hunt* (1984) 162 Cal.App.3d 302, 310.) When, however, a statute of limitations is applied to undisputed facts, review is de novo. (*Martino v. Workers' Comp. Appeals Bd.* (2002) 103 Cal.App.4th 485, 489; *Goodstein v. Superior Court* (1996) 42 Cal.App.4th 1635, 1641.)

We apply the same standards to this appeal as if Adisesh were not representing himself on appeal in propria persona: a party representing himself is to be treated like any other party and is entitled to the same, but no greater, consideration than other litigants and attorneys. (*Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247; *Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210.)

## I

The trial court apparently credited Betadpur's assertion that the longest potential statute of limitations applicable to Adisesh's complaint is found in Family Code sections 2120 through 2129,<sup>2</sup> the chapter entitled "Relief From Judgment," which apply to judgments entered on or after January 1, 1993. (§ 2129.) These provisions authorize a court in a dissolution proceeding to "relieve a spouse from a judgment, or any part or

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<sup>2</sup> All further statutory references are to the Family Code unless otherwise indicated.

parts thereof, adjudicating support or division of property . . . ." (§ 2121, subd. (a).)

Section 2122 "sets out the exclusive grounds and time limits for an action or motion to set aside a marital dissolution judgment." (*In re Marriage of Rosevear* (1998) 65 Cal.App.4th 673, 684.) That section permits a court to set aside "a judgment, or any part or parts thereof," because of "[a]ctual fraud where the defrauded party was kept in ignorance or in some other manner was fraudulently prevented from fully participating in the proceeding," but requires the aggrieved party to bring his or her action "within one year after the date on which the complaining party either did discover, or should have discovered, the fraud." (Fam. Code, § 2122, subd. (a); cf. Code Civ. Proc., § 473 [motion for relief from judgment entered through mistake or surprise shall be made within reasonable time, not to exceed six months, after it was entered].)

Thus, if Adisesh's complaint sought to set aside the 2001 judgment, it would be barred by the statute of limitations set forth in section 2122. However, a close reading of the complaint reveals that -- with one minor exception -- the complaint cannot be construed as an attempt to set aside the 2001 judgment.

The first cause of action, for declaratory relief, seeks a judicial declaration that Adisesh has an interest in the Palo Alto house in which Nanjappa now lives (and to which Betadpur holds title) because it was purchased with the \$70,000 Adisesh gave Nanjappa in connection with the parties' postjudgment



agreement. The second cause of action seeks to impose a constructive trust on the Palo Alto house.

In his third cause of action, entitled "Fraud -- Suppression of Fact," Adisesh alleges he was misled by Nanjappa's "suppression" of the fact of her bankruptcy filing and that, had he known about the bankruptcy, he would not have entered into the postjudgment agreement to transfer \$70,000 to Betadpur for Nanjappa's benefit.

The fourth cause of action, entitled "Fraud -- Intentional Misrepresentation of Fact," alleges that the representations Nanjappa made in connection with the postjudgment agreement were false -- i.e., "that she had no intention of honoring the [postjudgment] Agreement and intended to cash out the Prudential Securities IRA before [Adisesh] could have it transferred to his name" -- and made with the intent to induce Adisesh to transfer \$70,000 to Betadpur for Nanjappa's benefit.

Finally, the fifth cause of action for breach of contract alleges Nanjappa breached the postjudgment agreement by refusing to return it to the court for filing and entry as a judgment, and by cashing out the IRA account before it could be transferred to Adisesh.

None of these causes of action, to the extent they seek to recover the \$70,000 Adisesh paid to Nanjappa under the postjudgment agreement or the value of the IRA account he was to have received under that agreement, purport to "relieve a spouse from a judgment, or any part or parts thereof, adjudicating support or division of property . . . ." (§ 2121, subd. (a).)

Accordingly, they are not governed by the one-year statute of limitations applicable to actions seeking to set aside family law judgments. The trial court's judgment dismissing the complaint in its entirety was error.

The lone exception is this: Adisesh's complaint purports to seek to recover as damages under each of his three substantive causes of action the \$45,000 he paid into Nanjappa's bankruptcy estate to keep the family home ostensibly awarded to him in the 2001 judgment. By so doing, he is effectively seeking redress for Nanjappa's failure to disclose, before entry of the 2001 judgment, that she could not convey clear title to the family home because she had sought protection of the bankruptcy courts. Because the alleged fraud undermined the 2001 judgment, setting aside the 2001 judgment was a prerequisite to recovering this element of damages.

Consequently, the one-year statute of limitations set forth in section 2122 applies to any claim by Adisesh to recover his damages of \$45,000. Because he did not move to set aside the 2001 judgment (with its disposition of the family home) within a year of the date on which he discovered, or should have discovered, Nanjappa's fraud (§ 2122, subd. (a)), he is now foreclosed from seeking to recover his contribution to Nanjappa's bankruptcy estate.

Moreover, a timely action or motion to vacate the 2001 judgment was the only avenue by which Adisesh could have sought redress for Nanjappa's failure to disclose, before entry of the 2001 judgment, that she could not convey clear title to the

family home because she had sought protection of the bankruptcy courts. There is no derivative tort remedy for fraud in connection with the concealment of facts concerning the existence of community assets. (*Kuehn v. Kuehn* (2000) 85 Cal.App.4th 824, 834.) “Where a civil judgment is procured by extrinsic fraud, the normal remedy is to seek equitable relief from the judgment, not to sue in tort. [Citations.] Moreover, the absolute litigation privilege of Civil Code section 47, subdivision (b), bars derivative tort actions and “applies to all torts other than malicious prosecution, including fraud, negligence and negligent misrepresentation. [Citation.]” [Citations.]’” (*Ibid.*, citing *Rubenstein v. Rubenstein* (2000) 81 Cal.App.4th 1131, 1147; see e.g., *Brink v. Brink* (1984) 155 Cal.App.3d 218, 220 [aggrieved spouse brought an independent action in equity to vacate the judgment of dissolution on ground of extrinsic fraud]; see generally, 8 Witkin, Cal. Procedure (4th ed. 1997) Attack on Judgment in Trial Court, § 214 et seq., p. 718 et seq. & § 223, pp. 727-728.)

## II

With the exception of Adisesh’s attempt to recover his \$45,000 contribution to Nanjappa’s bankruptcy estate, there is no apparent impediment to Adisesh’s pursuing the relief sought by his complaint.

We reject the assertion by Nanjappa and Betadpur that Adisesh has no legal means to hold Nanjappa responsible for her actions in connection with the postjudgment agreement because

the 2001 judgment was never set aside and the parties' attempt to "modify" it never received judicial approval. This is not a unilateral attempt by Adishes to force Nanjappa to give him a larger share of the parties' community property division after the 2001 judgment became final. (Cf. *In re Marriage of Farrell* (1985) 171 Cal.App.3d 695, 699, 702.) Nanjappa signed a written postjudgment agreement to give up her rights to the IRA account in exchange for \$70,000. That this written agreement was never reduced to a judgment deprives Adishes of the summary, statutory methods available for enforcement of judgments and allows Nanjappa to raise defenses in the civil action that would be unavailable to an action to enforce the judgment. But it does not deprive Adishes of the right to litigate whether he is owed damages in contract or in tort based on the postjudgment agreement.

Nanjappa and Betadpur would have us accept that the existence of the 2001 judgment gives them carte blanche to defraud Adishes in property dealings thereafter. They are wrong: had the parties agreed after the court awarded the family home to Adishes that Nanjappa would purchase the home from him, and had Adishes alleged fraud or breach of contract in that agreement, he would not be precluded from pursuing judicial remedies by bringing a civil action for damages. This is no different.

Moreover, from the facts alleged in the complaint and the documents filed in the federal bankruptcy action, of which we may take judicial notice (Evid. Code, §§ 452, subd. (d)(2), 459,

subd. (a)(2)), we conclude Adisesh's claims are not barred by the applicable statutes of limitations.

From the record, we presume Adisesh knew about Nanjappa's bankruptcy filing -- and her corresponding failure to disclose it prior to the parties' entering into the postjudgment agreement -- when the bankruptcy trustee initiated adversary proceedings against him in May 2001. (See *Shamsian v. Atlantic Richfield Co.* (2003) 107 Cal.App.4th 967, 980 [a "'plaintiff is charged with 'presumptive' knowledge so as to commence the running of the statute [of limitations] once he or she has 'notice or information of circumstances to put a reasonable person on inquiry, or has the opportunity to obtain knowledge from sources open to his investigation . . . .'" [Citations.]'], quoting *Wilshire Westwood Associates v. Atlantic Richfield Co.* (1993) 20 Cal.App.4th 732, 740.) As the complaint was filed in January 2004, Adisesh's claim that Nanjappa defrauded him by withholding the news of her bankruptcy filing until he had transferred \$70,000 to her brother was made within three years of this event and is timely. (Code Civ. Proc., § 338, subd. (d).)

The record does not disclose the precise date of accrual of Adisesh's claim his former wife defrauded him by inducing him to transfer \$70,000 to Betadpur with no intent of giving Adisesh the IRA account in exchange. But we presume he could not have known of the fraud before March 16, 2001, the date Nanjappa closed the IRA account. The claim filed in January 2004, within three years of her closing the account, is timely.

Finally, as to Adisesh's breach of contract claim, the record indicates he had notice of her breach of the postjudgment agreement very soon after he signed the agreement in April 2001. The statute of limitations for breach of a written contract is four years. (Code Civ. Proc., § 337.) Adisesh's claims based on breach of the postjudgment agreement, filed in January 2004, are timely.

We shall reverse the judgment of dismissal. Adisesh shall be permitted to pursue his causes of action against Nanjappa and Betadpur under tort and breach of contract theories, consistent with this opinion. He should amend the complaint in joinder accordingly and file it as a regular civil action outside the family law court. (See *Sosnick v. Sosnick* (1999) 71 Cal.App.4th 1335, 1339.) As amended, it shall relate back to the date of filing of his original complaint.

#### **DISPOSITION**

Except as to that portion of the complaint seeking recovery of \$45,000 paid into Nanjappa's bankruptcy estate, the judgment of dismissal is reversed. The parties shall bear their own costs on appeal.

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RAYE, J.

We concur:

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SIMS, Acting P.J.

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CANTIL-SAKAUYE, J.